

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jan Thronsdson,

Complainant,

vs.

Jeffery Thompson,

Respondent.

**NOTICE OF DETERMINATION
OF PRIMA FACIE VIOLATION
AND
PREHEARING CONFERENCE**

TO: Parties on Attached Service List

On December 12, 2012, Jan Thronsdson filed a campaign complaint with the Office of Administrative Hearings alleging that Jeffrey Thompson violated Minn. Stat. § 211A.02 by failing to file accurate and complete campaign financial reports. The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on December 12, 2012, and a copy of the complaint was sent by United States mail to the Respondent on that same date.

After reviewing the Complaint and the attached documents, the undersigned Administrative Law Judge finds that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211A.02. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a telephone prehearing conference to be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m.** on **Tuesday, January 22, 2013.** The prehearing conference will be held by “meet me” telephone conference call. At the appointed hour, the parties are directed to:

- (a) Telephone 1-888-742-5095
- (b) Enter the Conference Code: 566-169-9282#

The parties are directed to have their calendars available during the telephone prehearing conference. Should this matter not be resolved at the prehearing conference, it will proceed to an evidentiary hearing before a panel of three Administrative Law Judges, pursuant to Minn. Stat. § 211B.33, subd. 2(d).

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: December 17, 2012

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

Jan Thronrdson ("Complainant") and Jeffrey Thompson ("Respondent") were both candidates for the Rochester City Council in the November 2012 election.

Complainant asserts that Respondent failed to comply with the financial reporting requirements set forth in Minn. Stat. § 211A.02. That statute requires a "candidate" or "committee" who receives contributions or makes disbursements of more than \$750 in a calendar year to file campaign financial reports listing, among other things, the amount, date and purpose of each expenditure made during the period of time covered by the report. The term "candidate," as defined in Minn. Stat. § 211A.01, subd. 3, includes any individual who seeks election to a municipal office. Under Minn. Stat. § 211A.02, the candidate or committee is required to file the first report within 14 days after the candidate or committee receives or makes disbursements totaling more than \$750 in a calendar year, and is required to file subsequent reports consistent with the timeframes set forth in the statute.

The Complainant attached to the Complaint copies of three campaign financial reports filed by the Respondent when he was a candidate for the Rochester City Council.¹ The first covers the period from September 25, 2012 to October 6, 2012.² The second covers the period from October 7, 2012 to October 26, 2012.³ The third covers the period from October 27, 2012 to December 3, 2012.⁴

The second report, filed on October 26, 2012, states that Respondent had an expenditure of \$2100.00 for billboards that was paid to Fairway Outdoor Advertising.⁵ The October 26, 2012 report is the only report that lists an expenditure for billboards.⁶

¹ Complaint (December 12, 2012).

² Complaint Attachment (Jeffrey Thompson Campaign Financial Report (October 6, 2012) (Report I)).

³ Complaint Attachment (Jeffrey Thompson Campaign Financial Report (October 26, 2012) (Report II)).

⁴ Complaint Attachment (Jeffrey Thompson Campaign Financial Report (December 3, 2012) (Report III)).

⁵ Report II.

⁶ See Reports I-III.

The Complaint alleges that the billboards supporting Mr. Thompson appeared in early September 2012.⁷ The Complaint also alleges that the billboards cost \$2800.00, not \$2100.00, and were “[d]istributed [b]y [a] [v]olunteer [c]ommittee for Jeff Thompson.” The Complaint further alleges that Mr. Thompson’s volunteer committee has not filed any campaign reports.⁸

In order to set forth a *prima facie* case of violations of Minnesota Statutes Chapters 211A and 211B, a complainant must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of either or both of those two chapters.⁹ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true. The allegations do not need independent substantiation.¹⁰ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove violations of chapter 211A or 211B occurred.¹¹

The Complainant claims that Mr. Thompson violated Minn. Stat. § 211A.02 by failing to list an expenditure for the billboards on his first financial report, filed on October 6, 2012. The Complainant also claims that Mr. Thompson violated Minn. Stat. § 211A.02 by including \$2100.00, not \$2800.00, as the amount of the expenditure for the billboards on his October 26, 2012 report and because his volunteer committee failed to file a report under Minn. Stat. § 211A.02.

The Administrative Law Judge concludes that the Complainant has alleged sufficient facts to demonstrate a *prima facie* violation of Minn. Stat. § 211A.02, but only as to the claim that Mr. Thompson did not accurately report the amount of the expenditure for the billboards. The Complaint alleges that Mr. Thompson paid \$2,800.00 for the billboards but only reported an expenditure of \$2,100.00. Because the Administrative Law Judge is required at this stage of the proceeding to accept the facts alleged as true, these facts are sufficient to support a *prima facie* case of inaccurate reporting of campaign expenditures in violation of Minn. Stat. § 211A.02.

The Complainant, however, has not alleged sufficient facts to support his claim that Mr. Thompson violated Minn. Stat. § 211A.02 by failing to report an expenditure for the billboards on his October 6, 2012 financial report. The Complaint alleges that the billboards appeared in early September 2012, not that Mr. Thompson paid Fairway Outdoor Advertising for the billboards at that time. Minn. Stat. § 211A.02 does not require reporting of an expenditure until the expenditure has been made. It is the paying of the bill, not the signing of a contract or the appearance of the billboards that requires reporting. Thus, this particular claim will not move forward.

⁷ Complaint.

⁸ Complaint.

⁹ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

¹⁰ *Id.*

¹¹ *Id.*

Likewise, Complainant's claim that the volunteer committee should have filed a report for the billboard expenditures will not move forward. This complaint is against Mr. Thompson, not his campaign committee. If the Complainant believes the campaign committee was required to file a report under Minn. Stat. § 211A.02, then Complainant would need to file a complaint against the committee.

For the foregoing reasons, the Administrative Law Judge concludes that the Complainant has alleged sufficient facts to establish a prima facie violation of Minn. Stat. § 211A.02 as described above.

J. M. C.